

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SUSAN BROWN,

Plaintiff,

v.

1:20-CV-1137
(GTS/DJS)

DAVID M. MARKOWITZ, M.D.; RICHARD
DIMICK, M.D.; ADIRONDACKS RADIOLOGY
ASSOCIATES, P.C.; GLENS FALLS HOSPITAL;
and ERIN MORINE, D.O.,

Defendants.

APPEARANCES:

DeGRAFF FOY & KUNZ, LLP
Counsel for Plaintiff
41 State Street
Albany, NY 12207

NAPIERSKI, VanDENBURGH, NAPIERSKI
& O'CONNOR, L.L.P.

Counsel for Defendants Markowitz, Dimick and
Adirondacks Radiology Associates, P.C.
296 Washington Avenue Extension
Albany, NY 12203

HON. ANTOINETTE T. BACON
Acting United States Attorney for the N.D.N.Y.
Counsel for Defendant Morine
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Albany, NY 12207-2924

GLENN T. SUDDABY, Chief United States District Judge

OF COUNSEL:

GEORGE J. SZARY, ESQ.

JOHN D. VanDENBURGH, ESQ.
DIANE LUFKIN SCHILLING,
ESQ.

CATHLEEN B. CLARK, ESQ.
Assistant U.S. Attorney

Currently before the Court, in this medical malpractice action filed by Susan Brown

DECISION and ORDER

(“Plaintiff”) against the five above-captioned individuals and entities, is the motion of Erin Morine (“Defendant Morine”) to substitute the United States of America for her and dismiss without prejudice Plaintiff’s claims against it pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671-2680, for lack of subject-matter jurisdiction. (Dkt. No. 5.) Plaintiff has consented to the motion and has requested that her remaining state-law claims (against the other Defendants) be remanded to New York State Supreme Court, Warren County. (Dkt. No. 10.) Defendant Morine has joined in the request for remand. (Dkt. No. 12.) The other Defendants have filed no opposition to Defendant Morine’s motion, and the deadline by which to do so has expired. (See generally Docket Sheet.)

After carefully considering the matter, the Court finds that Defendant Morine’s unopposed motion to substitute and dismiss, and Plaintiff’s unopposed request for remand, are at the very least facially meritorious. *See N.D.N.Y. L.R. 7.1(b)(3)* (“Where a properly filed motion is unopposed and the Court determined that the moving party has met to demonstrate entitlement to the relief requested therein, the non-moving party’s failure to file or serve any papers as this Rule requires shall be deemed as consent to the granting or denial of the motion, as the case may be, unless good cause is shown.”); *Rusyniak v. Gensini*, 07-CV-0279, 2009 WL 3672105, at *1, n.1 (N.D.N.Y. Oct. 30, 2009) (Suddaby, J.) (collecting cases); *Este-Green v. Astrue*, 09-CV-0722, 2009 WL2473509, at *2 & nn.2, 3 (N.D.N.Y. Aug. 7, 2009) (Suddaby, J.) (collecting cases).

ACCORDINGLY, it is

ORDERED that Defendant Morine’s motion to substitute the United States of America for her and dismiss without prejudice Plaintiff’s claims against it pursuant to the Federal Tort

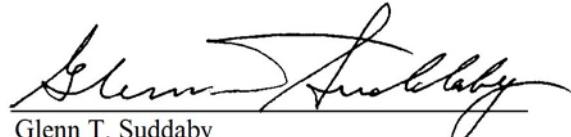
Claims Act, 28 U.S.C. § 2671-2680, for lack of subject-matter jurisdiction (Dkt. No. 5) is **GRANTED**; and it is further

ORDERED that the Clerk of Court shall **SUBSTITUTE** the United States of America for Defendant Morine in the caption of this action; and it is further

ORDERED that Plaintiff's claims against the United States of America are **DISMISSED without prejudice**; and it is further

ORDERED that the remaining state-law claims against the other Defendants in Plaintiff's Amended Complaint (Dkt. No. 1, Attach. 2, at 3-18) are **REMANDED** to New York State Supreme Court, Warren County.

Dated: November 13, 2020
Syracuse, New York



Glenn T. Suddaby
Chief U.S. District Judge